

Appl. No. 10/603,279  
Docket No. 9286L  
Amdt. dated 4/16/07  
Reply to Office Action mailed on 1/17/07  
Customer No. 27752

#### REMARKS/ARGUMENTS

Claims 1, 3, 5 and 10-15 are now under consideration. Claims 41-44 have been cancelled herewith without prejudice, solely to speed prosecution.

Claims 1, 5 and 10 have been amended to recite that the enzyme is asparaginase (basis at Claim 2, now cancelled) and to designate the hydrolysis of the amide group of asparagine to form aspartic acid (basis at page 3, third full paragraph and Figure 2). Claim 5 has also been amended to clarify that the asparaginase is acting on the food material. (See discussion under §112, below.)

Claim 10 has been further amended to make it quite clear that the level of acrylamide formed in the heated food product made from the asparaginase-treated corn-based food material is reduced. (See discussion under §112, below.)

It is submitted that all amendments are fully supported and entry is requested.

#### Rejections Under 35 USC 112

Claim 10 stands rejected due to the use of the phrase "reducing the level of acrylamide." The Examiner takes the position that this would be impossible, since the corn-based food product has no acrylamide prior to heating.

Applicants respectfully traverse the rejection on this basis. The Examiner's attention is directed to the disclosure at the bottom of page 3, A. Method for Reduction of Acrylamide in Corn-Based Food Products. Note that the disclosed process is not directed to reducing the level of acrylamide in corn-based food material per se, but rather in the heated corn food products that result from heating such material. Moreover, step (5) of the process requires heating the asparaginase-treated corn material. Thus, by the Examiner's own logic, the heated product of the heating step (5) would have contained acrylamide, but for the asparaginase enzyme treatment of the precursor material. It is therefore submitted that Claim 10 is abundantly clear and properly describes the invention. Reconsideration and withdrawal of the rejection on this basis are requested.

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Claims 1-5, 8-15 and 41-44 also stand rejected under §112, for reasons of record presented separately at pages 3-4 of the Office Action. Applicants respectfully traverse all of said rejections under §112.

The cancellation of Claim 41 obviates its rejection. The remaining claims, as now amended, recite the hydrolysis of the amide group of the asparagine, as clearly shown in Figure 2. In making the rejections at pages 3 and 4 of the Office Action, the Examiner has focused attention on the original claim language as, assertedly, indicating that the asparagine can be converted to *any* substance. [emphasis in original] It is submitted that the amendments herein fully meet these rejections by clearly specifying the enzyme, the reaction mechanism and the reaction product of the claimed method. Reconsideration and withdrawal of these rejections are requested.

#### Rejections Under 35 USC 103(a)

All pending claims stand rejected over Elder '054 (US Patent Application No. 2004/0058054) for reasons of record at pages 5-10 of the Office Action.

Applicants respectfully traverse these rejections in light of the submission of the §1.31 Declaration copy, discussed below.

#### Submission of §1.31 Declaration Copy

Submitted herewith is what is believed to be a true and accurate copy of the "DECLARATION OF DAVID VINCENT ZYZAK SUBMITTED PURSUANT TO 37 C.F.R. §1.31," filed in companion Application US 10/606,137, P&G Docket No. 9043MXL. As stated at pages 1-2 of said Declaration, Dr. Zyzak makes: . . . **this Declaration in support of Zyzak's claim that the invention claimed in the Zyzak '137 application was made before the September 19, 2002 priority date of Elder et al.'s US patent application 10/247,504 (the "Elder '504 application"), as well as before the September 11, 2002 publication of the Health Canada Letter entitled "Acrylamide in Food Update" (the "Health Canada Letter").**

The Declaration goes on to describe experiments relating to the use of asparaginase to decrease acrylamide in cooked foods, including lab notebook entries related thereto. (See, for example paragraphs 8 and 10 of the Declaration.) Dr. Zyzak

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declares that the dates of at least the work referred to at paragraphs 10, 14, 20 and 27 were before September 10, 2002.

For the record, it is noted that Elder Application 10/247,504 is the base Application for the Elder publication US 2004/0058054 A1, cited against the present Application.

Inasmuch as the date of Dr. Zyzak's work is asserted in the §1.31 Declaration to be before the priority date of Elder '504 (corresponding to Elder '054), it is submitted that '054 cannot be used to support a rejection under §103.

Furthermore, since Elder '054 is the only document cited against the claims, it is submitted that the aforesaid Declaration under §1.31 has overcome all rejections under §103. Withdrawal of all rejections is therefore requested.

Provisional Double Patenting

The separate double patenting rejections at pages 11-12 of the Office Action are noted.

Inasmuch as these rejections are all made provisionally, it is submitted that they should be held in abeyance until final disposition of the various claims. At that time, appropriate Terminal Disclaimers can be filed, as may be appropriate.

In light of the foregoing, early and favorable action in the case is requested.

Respectfully submitted,

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